

ORDINANCE 2015-15

ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING CHAPTER XXIV, TITLED “TELECOMMUNICATIONS FACILITIES”, ADDING A NEW SECTION 24-3, TITLED “AGREEMENT WITH LIGHT TOWER FIBER LONG ISLAND, LLC”, AND CONSENTING TO LIGHTTOWER’S USE OF THE RIGHTS-OF-WAY

BE IT ORDAINED by the Township Committee of the Township of Chatham, in the County of Morris, State of New Jersey, that Chapter XXIV, titled “Telecommunications Facilities”, of the Revised General Ordinances of the Township of Chatham be amended to add a new Section 24-3, titled “Agreement with Light Tower Fiber Long Island, LLC”, and consenting to Lighttower’s use of the rights-of-way as follows:

Section 1. The title of Section 24-3 shall be “Agreement with Light Tower Fiber Long Island, LLC.”

Section 2. The text of Section 24-3 shall be as follows:

§24-3.1 Preamble.

Light Tower Fiber Long Island, LLC, d/b/a Lighttower Fiber Networks (“Lighttower”) requested permission to install telecommunications cable in the public rights-of-way of the Township of Chatham, New Jersey (“Township”) by attaching such cable to poles owned by public utilities located in the public rights-of-way of the Township.

Lighttower has been approved by the New Jersey Board of Public Utilities (“NJBPU”) to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket Number TM08040212 on June 16, 2008. Pursuant to such authority granted by NJBPU, Lighttower may locate, place, attach, install, operate and maintain telecommunication facilities within the public rights-of-way for purposes of providing telecommunications services (“Facilities”).

The Township desires, pursuant to N.J.S.A. 54:30A-124, to grant permission for such use of the public rights-of-way upon the terms and conditions in this Section 24-2.

§24-3.2 Grant of Consent.

Consent. Subject to obtaining the permission of the owner of any existing utility poles or conduits to be used, the Township hereby authorizes and permits Lighttower, and its successors and assigns, to enter upon the public rights-of-way and to attach, install, operate, maintain, inspect, remove, reattach, reinstall, relocate or replace its Facilities in or on conduits or utility poles or other structures owned by public utility companies located within the public rights-of-way identified on Schedule A and as may be permitted by the public utility company or property owner, as the case may be.

§24-3.3 Limitation. The public rights-of-way shall not include rights-of-way under the jurisdiction of any other municipal, state, or federal government or department or agency, or any property owned by any person or governmental entity other than the Township, except as provided by law or pursuant to an agreement between the Township and any person or governmental entity.

§24-3.4 Term. The term of this Ordinance and the consent granted herein shall be 25 years from the Effective Date of this Ordinance and shall automatically renew for an additional 10 years (each, a “Term”), unless terminated earlier by: (i) an event of default under Section 24-3.9 of this Ordinance; or (ii) Lighttower upon thirty (30) days' prior written notice to the Township of its intention to terminate this Ordinance. Lighttower shall bear the cost of removal of its Facilities upon termination of this Ordinance.

§24-3.5 Permitting. Lightower provided the Township Engineer, or such other Township officer responsible for permitting use of the public rights-of-way, with a plan showing the route, location and manner of placement of Facilities upon, along, over or under the public rights-of-way attached as Schedule A. Lightower shall be limited to the rights-of-way route identified on Schedule A and any modification of that route must be approved by the Township Committee. Lightower shall comply with any and all reasonable requirements of the Township Engineer, or other such Township official as applicable, in connection with the construction or erection of Facilities that are imposed in accordance with the regulations and restrictions aforementioned in this Section 24-3.5 including any requirement for obtaining a road opening permit prior to any excavation work. Lightower shall bear the cost and expense for the construction or erection of its Facilities, and for the relocation of any of its Facilities as the Township may require from time-to-time.

§24-3.6 Costs. Lightower's construction or erection, service and maintenance of Facilities pursuant to the permission and consent granted herein shall be subject to regulations and restrictions as may be adopted by the Township from time-to-time on a non-discriminatory basis pertaining to the safety and convenience of persons or vehicles traveling on the public rights-of-way. To the extent provided under the regulations and restrictions aforementioned or as otherwise provided by law, Lightower shall reimburse the Township for the Township's costs and expenses incurred in connection with the permission and consent granted herein as provided by N.J.S.A. 54:30A-124, and shall obtain applicable permits and pay applicable permit fees. The Township shall not unreasonably deny or delay the issuance of applicable permits to Lightower.

§24-3.7 Township Facilities. The use by Lightower of any Township Facilities for the construction or erection and placement of Lightower's Facilities and subsequent service and maintenance, shall be subject to the amendment to this Ordinance and upon such reasonable terms and conditions as mutually agreed. For purposes of this subsection, "Township Facilities" means Township-owned street light poles, lighting fixtures, electroliers, or other Township-owned structures located within the public rights-of-way.

§24-3.8 Tree Trimming. Lightower represented to the Township that the installation of the Facilities would not require any tree trimming and this Ordinance is conditioned upon Lightower not trimming any trees within the Township.

§24-3.9 Indemnity.

A. Third Party Claims. Lightower agrees to indemnify and defend the Township from all third party losses, claims, damages, judgments, penalties (including reasonable attorney fees) resulting from any bodily injury or property damage to the proportional extent caused by the direct fault or negligence of Lightower, and its employees, agents and subcontractors. The Township shall provide prompt written notice of and furnish a copy of all written communications relating to any claim of indemnification covered hereunder. Lightower shall have the right to assume exclusive control of the defense or settlement of, or other efforts to resolve such claim. The Township agrees to cooperate reasonably with Lightower in connection with any such indemnification claim. The Township may engage counsel of its own choosing, at its own cost and expense.

B. Township Claims. In the event that any service, maintenance, removal or relocation of Lightower's Facilities causes the public rights-of-way to be damaged, Lightower at its sole cost and expense, shall promptly repair any such damage and return the public rights-of-way to a safe and satisfactory condition, normal wear and tear excepted. If Lightower does not repair such damage, then the Township shall have the option, upon fifteen (15) days' prior written notice to Lightower, to perform or cause to be performed such reasonable and necessary work on behalf of Lightower and to charge Lightower for the costs incurred by the Township at the Township's standard rates.

C. Insurance. Lightower shall obtain and maintain at all times during the existence of this Ordinance commercial general liability insurance and commercial automobile liability insurance protecting Lightower in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and an excess liability policy (or "umbrella") policy in the amount of five million dollars (\$5,000,000). Further, Lightower shall obtain and maintain at all times during

this Ordinance statutory workers' compensation and employer's liability insurance in an amount not less than one million dollars (\$1,000,000).

§24-3.10 Default. If Lightower fails to materially perform its obligations under this Ordinance, it shall be in default upon written notice thereof by the Borough. Upon notice of the default, Lightower shall have forty-five (45) days to cure the default before the Township shall have the right to terminate this Ordinance and pursue any and all claims in law or equity in respect of such default.

§24-3.11 Reservation of Rights. Any and all rights expressly granted to Lightower under this Ordinance which shall be exercised at Lightower's sole cost and expense shall be subject to the prior and continuing right of the Township under applicable laws to use any and all parts of the public rights-of-way exclusively or concurrently with any other person or persons and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the public right-of-way. Nothing in this Ordinance shall be deemed to grant, convey, create or vest in Lightower a real property interest in land, including any fee, leasehold interest, easement or any other form of interest or ownership now known or hereinafter devised.

§24-3.12 Governing Law. This Ordinance shall be governed and construed by and in accordance with the laws of the State of New Jersey.

§11-3-13 Assignment. The respective rights and obligations under this Ordinance shall inure to the benefit of and be binding upon the successors and assigns of Lightower. Except for assignment to an affiliate or successor to Lightower's business, as approved by the New Jersey Board of Public Utilities, Lightower shall not assign any interest in this Ordinance to any person or entity without the Township's written consent.

§24-3.14 Waiver. The waiver by the Township of any breach or violation of any provision of this Ordinance shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Ordinance.

§24-3.15 Headings. Section and subsection headings contained in this Ordinance are inserted for convenience of reference only, shall not be deemed to be a part of this Ordinance for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

§24-3.16 Severability. If one or more of the provisions of this Ordinance shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Ordinance and shall not affect the legality, validity, or constitutionality of the remaining portions of this Ordinance. The Township acknowledges that the NJBPU may impose additional terms and conditions under this Ordinance pursuant to its statutory authority. Either the Township or Lightower shall have the right to seek reconsideration or judicial review of the imposition of any such additional terms and conditions.

Section 3. This Ordinance shall take effect upon final adoption and publication according to law.

Introduced: August 13, 2015

TOWNSHIP OF CHATHAM, COUNTY OF
MORRIS, STATE OF NEW JERSEY

Adopted: September 10, 2015

Attest:

BY: _____
Kevin M. Sullivan, Mayor

Gregory J. LaConte, Clerk